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1 *Lead Counsel for the Indirect Purchaser Plaintiffs*

12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 IN RE: CATHODE RAY TUBE (CRT)
16 ANTITRUST LITIGATION

17 Master File No. 07-CV-5944-JST

18 MDL No. 1917

19 This Document Relates to:

20 **JOINT CASE MANAGEMENT
21 STATEMENT PURSUANT TO CIVIL L.R.
22 16-10(d)**

23 *ALL DIRECT PURCHASER ACTIONS*
24 *ALL INDIRECT PURCHASER ACTIONS*

25 Date: April 19, 2021

26 Time: 2:00 p.m.

27 Judge: Honorable Jon S. Tigar

28 Courtroom: Courtroom 6 – 2nd Floor

1 Pursuant to Civil Local Rule 16-10(d), Direct Purchaser Plaintiffs (“DPPs”), Indirect
 2 Purchaser Plaintiffs (“IPPs”) (together, “Plaintiffs”), and Defendants Irico Group Corporation and
 3 Irico Display Devices Co., Ltd. (the “Irico Defendants” or “Irico”), by and through the undersigned
 4 counsel, hereby submit this Joint Case Management Statement:

5 **Plaintiffs’ Statement**

6 **I. INTRODUCTION**

7 Plaintiffs’ Statement addresses developments since the Case Management Conference
 8 (“CMC”) on January 12, 2021.

9 **II. PRETRIAL AND TRIAL SCHEDULE**

10 At the CMC on January 12, 2021, the parties and the Court discussed scheduling at some
 11 length. IPPs, DPPs and the Irico Defendants had each submitted a proposed schedule through trial.
 12 After argument, the Court proposed a one-year discovery period which all parties agreed was
 13 appropriate. The Court directed the parties to continue to meet and confer as to the schedule, and, to
 14 the extent they could not agree, submit competing schedules with briefing by January 22, 2021. On
 15 that day, the parties submitted competing proposed schedules to the Court, along with briefs in
 16 support thereof. *See* ECF Nos. 5889 (DPPs), 5890 (Irico), 5891 (IPPs). Because IPPs already have a
 17 certified class against Irico, IPPs and DPPs submitted separate schedules proposing separate trials
 18 five months apart. *See* ECF Nos. 5889, 5891. In contrast, Irico proposes a joint schedule that would
 19 require IPPs to sit on the sidelines for approximately six months (at least) while Irico and the DPPs
 20 litigate class certification. *See* ECF No. 5890-1.

21 In addition, Irico’s proposal that it should have until November 16, 2021 to “substantially
 22 complete” its document production (*id.*) is unworkable given the January 12, 2022 discovery cutoff
 23 ordered by the Court. *See* ECF No. 5907. Irico’s schedule would leave Plaintiffs less than two months
 24 to review and translate Irico’s potentially voluminous Chinese-language document production, and
 25 then to schedule and take depositions of Irico witnesses. Moreover, Plaintiffs would be forced to
 26 complete this demanding work during the Holiday period. IPPs’ proposal that document discovery
 27 be completed by August 31, 2021 is reasonable and allows sufficient time (four and a half months)

1 for Plaintiffs to complete the work necessary to review Irico's production and take depositions before
 2 the discovery cut-off.

3 While Irico claims that it is working expeditiously to search for and produce responsive
 4 documents, it has yet to produce a single page despite six months having passed since it voluntarily
 5 dismissed its appeals. Irico's description of their production efforts fails to mention exactly what
 6 resources they are devoting to this effort. It also indicates that they may be conducting an inefficient
 7 manual review of hard copy documents, rather than scanning the documents and using one of the
 8 multitudes of e-discovery tools now available for efficiently searching electronic documents and
 9 identifying responsive information, which would also permit closer involvement by U.S.-based
 10 attorneys.

11 Finally, Irico's claim that IPPs' proposed schedule for expert discovery and pretrial
 12 disclosures is "illogical" is belied by the prior scheduling orders entered in this case, under which
 13 the parties began expert discovery before the close of fact discovery and began pretrial exchanges
 14 during briefing on the dispositive motions. *See* ECF No. 5891 at 3 (citing prior scheduling orders in
 15 this case).

16 The Court has not yet issued a schedule. For the foregoing reasons, and those set forth in
 17 Plaintiffs' January 22, 2021 briefs, Plaintiffs respectfully request that the Court enter their schedules.

18 The parties also submitted competing Proposed Case Management Orders on February 2,
 19 2021. *See* ECF Nos. 5898 (Irico), 5900 (IPPs/DPPs). Additionally, on February 15, 2021, in response
 20 to an order of the Court and "[t]o assist the Court in choosing between the parties' proposed schedules
 21 for the remainder of the Irico portion of this litigation," ECF No. 5905, IPPs submitted a declaration
 22 indicating that they would not file an addendum to the opening report of their expert. ECF No. 5906
 23 ¶ 3. The Court entered its Case Management Order ("CMO"), which adopted Plaintiffs' proposed
 24 CMO in full, on February 16, 2021. ECF No. 5907. While the CMO did resolve some issues relating
 25 to the schedule, it did not include the schedule itself.

26 III. DISCOVERY

27 A. **Status of Irico's Responses to Plaintiffs' Discovery**

With one small exception, the Irico Defendants have provided no meaningful responses. As discussed at the previous CMC, the Irico Defendants had not responded to any of the substantive written discovery—e.g., interrogatories, document requests—propounded by Plaintiffs during their absence from the case. After the Irico Defendants dismissed their appeal, and the mandate returned to this Court, in early November 2020, DPPs and IPPs demanded that Irico respond to this discovery. The parties met and conferred and agreed to a deadline of January 19, 2021, later extended to January 26, 2021. On that date, Irico served responses to the outstanding discovery. However, the responses contained no meaningful responsive information. They consisted only of objections and references to previous non-responsive responses to jurisdictional discovery, and indications that they might supplement their responses in the future.

The parties first had a meet and confer regarding Irico’s responses relating to its contacts and agreements with its competitors (Interrogatories Nos. 4 and 5 of DPPs’ First Set of Interrogatories)—the core liability issues in the case—and identification of employees with pricing authority (Interrogatory No. 2 of the same set). Plaintiffs informed the Irico Defendants that their responses were incomplete given the substantial and uncontradicted evidence in the record of their many contacts with competitors, including, for example, the testimony of their corporate representative that he had attended “many, many meetings” with competitors on behalf of Irico, and the meeting notes of other defendants documenting scores of meetings attended by Irico. Plaintiffs also agreed to narrow the scope of these interrogatories substantially. Despite its previous court-ordered investigations into at least 26 documented competitor meetings,¹ Irico claimed that its investigation into these matters was not complete and that they needed several more months to complete it. They also took the position that they need not include meetings their employees could not remember, even when those meetings are confirmed by other evidence, including the testimony of Irico’s Rule 30(b)(6) witness. Plaintiffs informed Irico that they believed this position was contrary to the previous order of the Special Master with regard to a similar discovery dispute with the Mitsubishi

¹ Order re DPPs’ Mot. for Jurisdictional Disc. (ECF No. 5324) (adopted by the Court on August 20, 2018 (ECF No. 5324 at 9)); Order Granting DPPs’ Mot. to Compel Compliance with 8/2/2018 Order re Jurisdictional Disc. (ECF No. 5352) (adopted by the Court on October 16, 2018 (ECF No. 5352 at 12)).

1 Defendants, and forwarded a copy of Judge Walker's order. Irico notified Plaintiffs that it would not
 2 agree to supplement its responses until May 10, 2021.

3 DPPs brought a motion to compel before Judge Walker, the Special Master appointed to
 4 preside over all discovery in this case, ECF No. 2272, requesting an order requiring Irico to provide
 5 supplemental responses to these interrogatories setting forth the information within its possession.
 6 While the matter was briefed as of March 8, 2021, a hearing could not be held until March 31, 2021.
 7 Based on Irico's representations that it would continue to respond to the interrogatories "on a rolling
 8 basis" and "commit[ted] to complete supplementation of their responses by May 10, 2021 and to do
 9 so in adherence to the procedures established by the undersigned herein in ECF No 4802 ('Mitsubishi
 10 Order['])"², Judge Walker set a further hearing for May 13, 2021. Order re DPPs' Mot. to Compel
 11 Resp. to Interrog. Nos 4 & 5 at 2 (Mar. 31, 2021) (ECF No. 5919). With the exception of a short
 12 supplemental response to Interrogatory No. 2, identifying employees with CRT pricing authority on
 13 March 15, 2021, the Irico Defendants have provided no supplemental responses to any discovery as
 14 of the date of this statement.

15 On March 18, 2021, the parties also met and conferred regarding Irico's responses to other
 16 previously served discovery requests. Plaintiffs asked for estimates of when good faith substantive
 17 responses could be expected. The Irico Defendants were unable to do so.

18 At a further meet and confer on April 10, 2021, the Irico Defendants indicated that they would
 19 not provide any substantive interrogatory responses before May 10, 2021, that they would—as
 20 represented to Judge Walker—provide substantive responses to Interrogatories Nos. 4 and 5 on that
 21 day, that they might provide additional responses on that day, and that they anticipated providing
 22 additional substantive responses within a few weeks thereafter. The Irico Defendants could not
 23 provide a date certain by which they would make a first production of documents; they indicated that
 24 they might be able to do so in approximately three weeks.

25 **B. Status of DPPs' Responses to Irico's Discovery Requests**

28 ² Order re Direct Purchaser Pls.' Mot. to Compel Mitsubishi Disc. re Meetings with Competitors,
 Sales, Destruction of Evid. & for Evidentiary Sanctions (Aug. 29, 2016) (ECF No. 4802).

1 The Irico Defendants have asked for, and DPPs have provided, substantial assistance in
 2 identifying and locating DPPs' responses to other Defendants' discovery requests. Among other
 3 things, DPPs have provided over one hundred of their previous discovery responses and related
 4 documents, identified all documents produced, and identified the dates and court reporters of all of
 5 the depositions of the DPP class representatives.

6 In addition, on April 10, 2021, DPPs agreed to produce again all of the documents previously
 7 produced by the current DPP class representatives.

8 Irico also propounded a set of document requests and interrogatories on DPPs. DPPs are
 9 working to timely respond to this discovery.

10 **C. Status of IPPs' Responses to Irico's Discovery Requests**

11 Pursuant to the Court's CMO, which limited discovery of IPPs to the four new class
 12 representatives and non-duplicative contention interrogatories and RFA's, Irico propounded a set of
 13 document requests and interrogatories on IPPs' four new class representatives on March 19, 2021.
 14 IPPs are working with the four class representatives to timely respond to these discovery requests.

15 **IV. STATEMENT REGARDING ALTERNATIVE DISPUTE RESOLUTION**

16 Pursuant to Local Rule 16-10(d), requiring that subsequent case management statements
 17 "must report the parties' views about whether using some form of ADR would be appropriate[],"
 18 Plaintiffs state that they are always willing to consider ADR or mediation.

19 **V. CONCLUSION**

20 Plaintiffs respectfully request that the Court enter a pretrial schedule for the case against Irico.

21 **Irico Defendants' Statement**

22 Irico has been working diligently to meet its discovery obligations since the last CMC on
 23 January 12, 2021. At that time, the Court ordered a one-year period for fact discovery, to which all
 24 parties agreed. ECF No. 5907. The parties then submitted competing schedules in which the DPPs
 25 and IPPs effectively ignore the Court's guidance that discovery in this matter should reasonably
 26 take one year. *Compare* Irico Scheduling Proposal, ECF No. 5890, at 5-8, *with* [DPPs] Brief in
 27 Support of Proposed Schedule, ECF No. 5889, at 6-8, *and* [IPPs] Brief in Support of Proposed
 28 Pretrial Schedule, ECF No. 5891, at 5-8. The Court has not yet ruled on the case schedule.

1 Specifically, despite the Court-ordered one-year discovery period, DPPs continue to push
 2 for unrealistic discovery deadlines, including an unrealistic cutoff *on this hearing date* for Irico to
 3 produce any documents that it intends to rely on for a class certification opposition that would not
 4 be due for at least another four months even under DPPs' accelerated schedule. ECF No. 5889 at
 5 6. Likewise, IPPs propose that both fact *and expert* discovery be completed within one year, which
 6 clearly is not feasible, and request that the Court enter an unrealistic August deadline for the close
 7 of document discovery. ECF No. 5891 at 5.

8 Irico respectfully requests that the Court enter Irico's proposed schedule and will be
 9 prepared at the upcoming CMC to address any issues related to scheduling concerns raised by the
 10 Court.

11 **A. Discovery**

12 1. Irico's Efforts to Respond to Plaintiffs' Discovery

13 Irico has been diligently carrying out its discovery obligations. As noted above, Irico
 14 served initial responses on January 26, 2021 to the 99 discovery requests propounded by Plaintiffs.
 15 Irico also met and conferred with Plaintiffs in February and agreed to focus on selected
 16 specifications that Plaintiffs prioritized. Irico is continuing its investigation, including conducting
 17 searches for potentially responsive documents and interviewing employees to gather relevant
 18 information related to discovery requests. As Irico has previously advised both Plaintiffs and the
 19 Court, the circumstances are particularly challenging given the large volume of hard-copy Chinese-
 20 language documents stored in Irico's archives in China that all need to be reviewed for
 21 responsiveness, amidst the ongoing global pandemic that, among other things, prevents Irico's
 22 counsel from traveling to China to assist with the discovery process.

23 Despite these challenges, Irico continues to make progress. It has provided initial responses
 24 to 99 discovery requests from DPPs and IPPs, begun substantive supplementation of interrogatory
 25 responses, and plans to make the first of a series of rolling productions of documents in the coming
 26 weeks. Irico responded substantively and quickly to one of DPPs' three priority interrogatories
 27 regarding individuals with pricing authority and, contrary to Plaintiffs' assertions above,

1 committed to Plaintiffs to provide rolling supplementation of its responses to DPPs' other two
 2 priority Interrogatories over the coming weeks (prior to May 10).

3 Irico has been required to spend considerable time (that could better have been devoted to
 4 ongoing discovery efforts) responding to a premature motion to compel brought by DPPs, in
 5 response to which Judge Walker noted Irico's efforts to date and allowed Irico to continue its
 6 investigation and serve supplemental responses on its proposed schedule. *See* Notice of Entry of
 7 Order by Special Master at 5, ECF No. 5919. In that context, contrary to Plaintiffs' assertion, Irico
 8 never "took the position that [it] need not" include its own witness testimony in these discovery
 9 responses, but rather explained that it needed time to conduct the necessary investigation of these
 10 complex issues. At the March 31 hearing, Judge Walker indicated that Irico's proposed May 10
 11 date for supplementing its response to these interrogatories was reasonable given the scope of
 12 investigation required, and "directed the parties to continue this process." *Id.* Irico and Plaintiffs
 13 held a constructive meet and confer on April 9, 2021, during which Irico committed to produce
 14 responses to additional priority discovery requests that DPPs recently identified by specific dates in
 15 May.

16 2. Irico's Discovery Requests to DPPs and IPPs

17 On March 19, 2021, Irico served requests on 1) DPPs seeking discovery on responses to
 18 claims submitted in the DPP action, and 2) IPPs for discovery related to their four newly named
 19 class representatives. Responses to those requests are due on April 19, 2021.

20 In order to meet its good faith obligation to avoid duplicative discovery, Irico has met and
 21 conferred with DPPs regarding prior discovery requests and responses in this action, following
 22 which DPPs provided some previous discovery responses that Irico had never been served. DPPs
 23 also provided Irico with over 100 discovery responses from the Mitsubishi action that had not been
 24 previously served on Irico. Irico continues to evaluate those responses and work with DPPs to
 25 understand the full record of prior responses, document productions and unresolved discovery
 26 disputes. Irico anticipates that it may file some additional discovery requests as needed to update
 27 prior discovery but continues to work collaboratively with DPPs to avoid unnecessary discovery.

1 Irico continues to evaluate other necessary discovery and also intends to serve contention
2 interrogatories and requests for admission at a later date.

3 **B. Scheduling**

4 Irico continues to believe that its proposed schedule, ECF No. 5890, offers an ambitious
5 and expeditious path to trial, with interim deadlines for discovery, class certification, and merits
6 expert disclosures. This proposal endeavors to accomplish in a highly compressed time frame what
7 took several years for other defendants in this litigation to complete. DPPs' and IPPs' separate
8 proposed schedules remain unrealistic as to both the timing and overall process for how this case
9 should proceed. The separate paths for the DPP and IPP cases that they outline remain highly
10 inefficient.

11 DPPs' schedule for completing relevant discovery and starting class certification is
12 unrealistic. For example, DPPs' proposed date for Irico to "pre-disclose" any evidence it intends to
13 rely on in opposition to DPPs' not-yet-filed class certification motion is April 19, 2021 – i.e., the
14 very day of this CMC. As discussed above, Irico has been and continues to diligently search for
15 and collect potentially responsive documents and information through a time- and labor-intensive
16 investigation involving searches of voluminous hard-copy archives and to reach out to a large
17 number of former employees who once had roles in Irico's now-defunct CRT business. Several
18 months into merits discovery, it is now even more obvious that Plaintiffs' proposals are unrealistic.
19 While Irico is expeditiously searching for and collecting potentially responsive documents
20 covering the alleged thirteen-year class period from its extensive hard copy archives, this is an
21 unavoidably slow process because Irico's archive documents are generally sorted chronologically
22 rather than by topic or subject matter, requiring a document-by-document process to identify,
23 collect, scan, and review documents for responsiveness. Requiring this type of premature
24 disclosure when Irico has not yet had a reasonable opportunity to substantially complete its
25 document search and production is clearly prejudicial. Similarly, DPPs' suggestion that the parties
26 will be in position to begin class certification briefing in June – just two months from now – is
27 impractical. Irico's proposed schedule offers a reasonable, yet still aggressive, alternative with
28 class certification briefing beginning in October 2021.

1 For its part, IPPs' schedule remains fundamentally flawed as a result of its illogical
 2 proposals to conduct merits expert disclosures months *before* the close of fact discovery and to
 3 identify trial exhibits, witnesses, and designations *before* issue-limiting dispositive motions can be
 4 decided. These disordered deadlines run contrary to the Court's determination that one year is
 5 necessary for fact discovery in this matter and efficient litigation precedent as described in Irico's
 6 supporting brief, ECF No. 5890 at 3-4, and all but ensure that the schedule will need to be amended
 7 repeatedly to allow for additional time to complete document productions, supplement expert
 8 reports, and account for the Court's future dispositive motion rulings. IPPs' insistence that
 9 document productions be not just substantially but *fully* complete in just over four months (by
 10 August 31) ignores the Court's ruling that fact discovery will take a year in this matter. Moreover,
 11 it is simply not feasible given the previously discussed logistical challenges that Irico faces, nor is
 12 it reasonable given that other Defendants required years to complete the same process while able to
 13 work under normal conditions not impacted by a global pandemic. IPPs' accelerated discovery and
 14 trial schedule would also force Irico to defend itself simultaneously on multiple fronts. For
 15 example, under Plaintiffs' inefficient "split" schedules, Irico would be in trial against the IPPs
 16 while at the same time addressing dispositive motions in the DPP case – a clear effort to stretch and
 17 distract Irico's defense resources.

18 Irico's scheduling proposal strikes the right balance by utilizing the one year ordered by the
 19 Court for fact discovery, with substantially complete document productions by mid-November to
 20 allow two months for all parties to review and finalize any remaining fact discovery. It also
 21 follows a logically phased approach by placing merits expert exchanges after the parties have
 22 produced documents and information on which those experts will need to rely, and maximizes
 23 efficiency with the parties' pretrial disclosures by taking advantage of any narrowing of issues
 24 from the Court's dispositive motion rulings.

25 **C. Settlement and ADR**

26 Irico is willing to consider options for mediation with Plaintiffs.

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1 Dated: April 12, 2021

Respectfully submitted,

2 /s/ R. Alexander Saveri

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*Attorneys for Defendants Irico Group Corp.
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ATTESTATION

I, Andrew L. Lucarelli, hereby attest, pursuant to United States District Court, Northern District of California Civil Local Rule 5-1(i)(3), that concurrence in the filing of this document has been obtained from the other Signatory hereto.

By: *s/ Andrew L. Lucarelli*
Andrew L. Lucarelli